THE HON'BLE SRI JUSTICE C.V. RAMULU

Friday, 15th day of December,2006

W.P.Nos.15033 of 2001 and 24843 of 2003

Between :

Davuluri Somasekhara Rao & others … Petitioners

and

The Joint Registrar/Dist.
Coop.Officer, Guntur
and others … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.Nos.15033 of 2001 and 24843 of 2003

ORAL ORDER:

W.P.No.15033 of 2001

This Writ Petition is filed seeking a Mandamus declaring the Orders of the 1st respondent in Rc.No.2625/99-C2, dated 13-11-1999 and 10-10-2000 as arbitrary and illegal.

It appears that during the tenure of the petitioners as Chairman/Managing Committee Members of Tenali Cooperative Urban Bank Limited, Tenali, there was a theft of Rs.4,30,140/- from the Bank. Immediately, the Secretary of the Bank gave a police report about the same. The Police investigated the case and recovered a cash of Rs.1,75,000/- from the Cashier and some gold ornaments worth about Rs.30,000/- from the concubine of the Cashier, who purchased the gold ornaments from out of the stolen cash. Police filed a charge sheet in C.C.No.274 of 1999 on the file of I Additional Munsif Magistrate, Tenali against the Cashier, which was pending (as on the date of filing of the Writ Petition). The Management of the Bank got filed a petition in Claim Petition No.148 of 1999 before the Deputy Registrar of Cooperative Societies, Tenali against the Cashier-M.Babu Rao, Secretary and Assistant Secretary for recovery of the theft amount of Rs.4,30,140/-. According to the petitioners, an Award was passed in favour of the Bank and against the said three persons. Aggrieved by the same, O.A.Nos.36 and 43 of 2002 were filed before the A.P. Cooperative Tribunal, Vijayawada. Thereafter, the said three persons

have satisfied and discharged the amount of Rs.4,30,140/-. While that being so, the 2nd respondent enquired into the matter and submitted a preliminary report in Rc.No.1724/99/C2, dated 13-5-1999. Instead of taking action on the said report, the 2nd respondent, on the directions of the 1st respondent in his File Rc.No.2625/99-C2, dated 14-7-1999, appointed the Cooperative Sub-Registrar/Weaker Section, Tenali as Enquiry Officer again to enquire into the theft case on the representations/petitions of dissident group in the Bank, in his Proceedings No.1724/99-C2, dated 28-7-1999. The said Cooperative Sub-Registrar/Weaker Sections submitted an enquiry report and as the said report is not favourable to him, 1st respondent appointed the 3rd respondent again as Enquiry Officer in his Proceedings in Rc.No.2625/99-C2, dated 13-11-1999 to enquire into the very same matter i.e. theft and representations/petitions of dissident group under Section 51 of the Andhra Pradesh Cooperative Societies Act,1964 and to submit a report. Pursuant to the same, the 3rd respondent has now issued notice of enquiry into the matter on 18-6-2001 and 3-7-2001 to the 1st petitioner. According to the petitioners, the very appointment of the 3rd respondent as Enquiry Officer for conducting enquiry under Section 51 of the Act on the very same subject matter is arbitrary, illegal and without jurisdiction. The enquiry was already held and a report was submitted on 13-5-1999. Again, the 2nd respondent, on the direction of the 1st respondent has appointed another Enquiry Officer by his Proceedings dated 28-7-1999 for the same purpose and a report was submitted by the Enquiry Officer. Now, the 1st respondent has appointed the 3rd respondent as Enquiry Officer under his Proceedings dated 13-11-1999 for the third

time for the same purpose of conducting enquiry under Section 51 of the Act. This sort of successive enquiries is not contemplated under the law and it is hit by the theory of double jeopardy. The preliminary report of the Enquiry Officer is only recommendatory in nature and competent authority i.e. the 1st respondent can initiate enquiry, either by accepting or rejecting the report. Even if the 1st respondent does not agree with the earlier report, he can proceed with the matter and take action. But, he has no power to order for series of enquiries, one after the other, until he gets favourable report. Therefore, the impugned Orders are arbitrary and illegal and are liable to be set aside.

On behalf of the respondents, a detailed counter affidavit has been filed, wherein it is asserted that the question of conducting successive enquiries under Section 51 of the Act does not arise. In view of the fact that some members of the Bank put in a representation to the 1st respondent on the functioning of the Bank and requested to take action, an enquiry was launched. The contention of the petitioner that the 1st respondent is disposed of enimically towards the petitioners is not correct. The filing of Writ Petition No.19747 of 1999 and Contempt Case No.91 of 2000 against the 1st respondent are nothing to do with the ordering of enquiry under Section 51 of the Act. By Proceedings dated 13-11-1999 the enquiry was ordered under section 51 of the Act into the constitution, working and financial position of Tenali Cooperative Urban Bank Limited, Tenali and on the allegations made by the members of the Bank on the working of the Bank, the 1st respondent authorized the Cooperative Sub-Registrar/Credit, Office of the Divisional Cooperative Officer, Tenali to conduct the said enquiry. In fact, K. Ravindrababu, Secretary of the

Bank filed Writ Petition No.30 of 2000 before this Court against the Orders of the 1st respondent dated 13-11-1999. Initially, while admitting the Writ Petition on 5-1-2000 this Court granted stay of all further proceedings; however, subsequently, the very Writ Petition itself was dismissed on 14-9-2000. Consequent to the said Orders of this Court, the 1st respondent issued Orders on 10-10-2000 in partial modification of the orders issued in his Proceedings dated 13-11-1999 and appointed the Sub-Divisional Cooperative Officer, Tenali as Enquiry Officer under Section 51 of the Act to conduct enquiry into the affairs of the Bank. Further, the Tenali Cooperative Urban Bank Limited, Tenali represented by its Secretary (Incharge) filed a claim under Section 61(1)(c) of the Act for an amount of Rs.4,30,140/- against (1) Kantheti Ravindrababu, (2) Pagadala Syama Sundara Rao and (3) Nandela Baburao, employees of the Bank. The arbitration claim was under process and posted to 18-8-2001 for hearing (as on the date of filing counter). A police complaint was filed against the Cashier of the Bank. The Inspector of Police, Tenali Circle filed a charge sheet on 28-10-1999 and cash of Rs.1,75,000/- and gold ornaments worth Rs.28,000/- was shown as recovery from the Cashier. The criminal case in C.C.No.274 of 1999 on the file of the learned I Additional Munsif Magistrate, Tenali was pending (on the date of filing counter). Further, it is asserted that the contention of the petitioner that it is open to the 1st respondent to take action on the basis of the report or drop the proceedings and 1st respondent has no jurisdiction to enquire into the matter under Section 51 of the Act is not correct. The proceedings of the 1st respondent under Section 51 of the Act is an elaborate statutory enquiry, which gives wide scope to initiate surcharge proceedings under Section 60

of the Act against anybody, who is responsible for the loss caused to the Bank, either by the employee or the Member of the Managing Committee of the Bank, directly or indirectly. Therefore, for the purpose of fixing responsibility and for recovery of the misappropriated amounts, an enquiry under Section 51 is a must. As such, the impugned Orders do not suffer from any irregularity or illegality. Further, the question of conducting successive enquiries does not arise. Respondent No.2, on 28-7-1999 instructed the Cooperative Sub-Registrar/Weaker Sections, Office of the Divisional Cooperative Officer, Tenali to submit a report on the representations/petitions filed by the Members of the Bank on the working of the Bank. But, the Cooperative Sub-Registrar/Weaker Sections has not submitted any report on the representations of the members of the Bank. The allegation of the petitioners that since the report submitted by the Enquiry Officer is not in favour of the 1st respondent; therefore, the enquiry for the second time is ordered, is not correct. Further, the 3rd respondent has commenced the enquiry and examined the members and obtained their depositions on 22-5-2001, 24-5-2001 and 25-5-2001 and proceeded further for examination of petitioners and others. At that stage, this Writ Petition is filed.

Learned counsel for the petitioners submitted that the enquiry ordered on 13-11-1999 is the third enquiry. Though the amount of Rs.4,30,140/- stolen by the Cashier was recovered from him, the then Assistant Secretary and Secretary, an enquiry against the very same subject matter is being launched purported to be under Section 51 of the Act on the representations filed by some of dissident group members of the Bank. Firstly, the amount of Rs.4,30,140/- has already been recovered; therefore, no enquiry can be conducted into such a matter for the second time. Secondly, on the basis of some

representations made by the dissident group members, no enquiry under Section 51 of the Act is permissible, unless such an application is made as per law, particularly, as required under Section 51. An amount of Rs.1,75,000/- was recovered in cash and further gold ornaments worth Rs.30,000/- were also recovered. During the pendency of C.C.No.274 of 1999 on the file of learned Additional Munsif Magistrate, Tenali, the cashier died. Therefore, the Assistant Secretary and Secretary have paid the amount in view of the Orders passed in claim petition No.148 of 1999. The very enquiry conducted under Section 51 of the Act for the first time on 13-5-1999 was in view of the news report that appeared in 'Vaartha' daily. Again on 28-7-1999, the 1st respondent ordered for enquiry under Section 51 of the Act and the report submitted in such enquiry has not seen the light of the day. Again, with an vindictive attitude that since the petitioners have filed earlier a Writ Petition and Contempt Case against 1st respondent, he has ordered for enquiry under Section 51 of the Act on 13-11-1999. Further, now an enquiry is ordered again on 10-10-2000. What exactly is the purpose for which the enquiry is sought to be made is also not known. Therefore, the impugned Orders are contrary to the provisions of the Act and in violation of principles of natural justice and also amounts to double jeopardy; as such, they are liable to be set aside.

Per contra, learned Government Pleader appearing for the respondents stated that the enquiry that was conducted on 13-5-1999 is a preliminary enquiry in pursuance of a news item and the second purported enquiry pursuant to the Proceedings dated 28-7-1999 was not at all conducted and only on 13-11-1999 enquiry was ordered under Section 51 of the Act as to the constitution, working and financial position of Tenali Cooperative Urban Bank Limited, Tenali; against

which, W.P.No.30 of 2000 was filed and initially stay was granted on 5-1-2000; however, the Writ Petition itself was dismissed, later, on 4-9-2000; therefore, consequential Orders were passed on 10-10-2000 with a partial modification of the Orders dated 13-11-1999 authorizing the Sub-Divisional Cooperative Officer to enquire under Section 51 of the Act. Filing of Writ Petition No.19747 of 1999 and Contempt Case No.91 of 2000 earlier is nothing to do with the present enquiry. The enquiry is not contemplated against the petitioners and it is contemplated against the constitution, working and financial position of the Bank, for which, the petitioners should not have any grievance. Thus, there is no illegality or irregularity committed by the respondents in issuing the impugned Orders. Learned Government Pleader further stated that the recovery of Rs.4,30,140/-, which was the subject matter of embezzlement and initiating proceedings under Section 51 on the basis of the representations of the members, will not come in the way of the respondents in invoking the powers under Section 51 of the Act. No ground is made out by the petitioners to interfere with the impugned Orders.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned Orders and other material made available on record.

At the outset, it may be necessary to notice that there is no dispute as to recovery of the entire amount of Rs.4,30,140/- in the embezzlement case, which was subject matter of criminal case in C.C.No.274 of 1999 on the file of the learned Additional Munsif Magistrate, Tenali and the claim petition No.148 of 1999 before the Divisional Cooperative Officer, Tenali. Whereas the Order dated 13-5-1999 contemplating the enquiry under Section 51 of the Act is as to the embezzlement of Rs.4,30,140/-. Assuming that no enquiry was

conducted pursuant to the Orders dated 28-7-1999, there was no necessity as on 13-11-1999 for conducting a farce of enquiry insofar as embezzlement amount of Rs.4,30,140/- is concerned. This Order dated 13-11-1999 was the subject matter of Writ Petition No.30 of 2000, which was ultimately dismissed on 4-9-2000. Thus, there was a delay in the meanwhile. It appears, added to this, respondents also received certain representations from the dissident group members of the Bank and, therefore, a modified order was passed on 10-10-2000 for conducting a detailed enquiry under Section 51 of the Act. The proceedings dated 28-7-1999, 13-11-1999 and 10-10-2000 contemplate enquiry under Section 51 of the Act as to the embezzlement of Rs.4,30,140/- and the functioning of the Bank i.e. the irregularities said to have been committed by the petitioners, on the representation of the dissident group members. Even this is the assertion made by the respondents in the counter affidavit filed by them.

Firstly, absolutely there was no necessity for conducting any enquiry into the embezzlement of Rs.4,30,140/-, which stood discharged. Secondly, on mere representations submitted by some Members of the dissident group of the Bank, the enquiry under Section 51 cannot be taken up, unless it satisfies all the ingredients of Section 51 of the Act. Admittedly, in this case, only 50 members of the entire Bank, which has got a total membership of more than 5,000 had filed a complaint for the purpose of conducting a detailed enquiry into the matter. This itself shows that the enquiry was not contemplated *suo motu* by the 1st respondent. It is ordered only at the behest of some members of the dissident group. Here, it may be necessary to notice the provisions under Section 51 of the Act, which read as under:

> "**51. Inquiry:**-- The Registrar, may of his own motion and shall, on the application of a society to which the society concerned is

affiliated, or of not less than one third of the members of the Committee, or of not less than one fifth of the total number of members of the society, hold an inquiry or direct some person authorised by him by an order in this behalf to hold an inquiry into the constitution, working and financial condition of a society. Such inquiry shall be completed within a period of four months and the report of inquiry along with the findings of the Registrar thereon shall be communicated to the managing committee of the society. It shall be the responsibility of the managing committee to place the inquiry report before the General Body or Special General Body convened for the purpose for its information, within a period of one month from the communication of the inquiry report by the Registrar. The Registrar shall be competent to initiate action under the provisions of this Act, if the committee fails to take action as aforesaid:

Provided that notwithstanding anything contained in this Act and the Rules made thereunder, the bye laws of a society and the action of the society in placing the inquiry report alongwith the findings of the Registrar, the Registrar shall not be precluded from taking follow up action as may be required on the basis of inquiry report:

Provided further that such action shall not be nullified even if the General Body of the Society passes a resolution negativing the findings of the inquiry:

Provided also that the Registrar may for reasons to be recorded in writing extend the period of four months for completion of inquiry for a further period not exceeding two months.

Explanation:- ……..”

The facts and circumstances of the case do not show that the enquiry under Section 51 of the Act was initiated by the Registrar on his own motion or on an application of the society to which the society is affiliated, which question does not arise in this case, or on the representation by 1/3rd members of the committee or not less than 1/5th of the total number of members of the society.

Apart from the above, learned counsel for the petitioners stated that by the time the enquiry was ordered, the Bank was already registered under the A.P. Mutually Aided Cooperative Societies

Act,1955. Therefore, the respondents could have invoked, even if the same is to be correct, the provisions of that Act and not the provisions of the A.P. Cooperative Societies Act,1964.

For all the above reasons, I am of the opinion that the successive enquiries conducted by the respondents are bad in law and as such, the impugned Orders are liable to be set aside and are accordingly, set aside. As such, the Writ Petition is liable to be allowed.

W.P.No.24843 of 2003

This Writ Petition, in a way, is connected to the above Writ Petition. As noticed in the above Writ Petition, petitioners have asserted that out of the embezzlement amount of Rs.4,30,140/-, cash of Rs.1,75,000/- and gold jewellery worth Rs.30,000/- were recovered from the 4th respondent (since died) and his alleged concubine. Aggrieved by the Orders passed by the Arbitrator, Cooperative Department, Tenali on 19-12-2001 in Claim No.148/99-2000 granting decree in favour of the Bank to recover an amount of Rs.4,30,140/- with interest at 18% per annum from 11-5-1999 till the date of realization, from the petitioners herein and the 4th respondent, petitioners filed two separate apeals in O.A.Nos.36 and 43 of 2002 before the A.P. Cooperative Tribunal, Vijayawada. Pending the said O.As., before the Tribunal, the 3rd respondent-Bank recovered an amount of Rs.28,721/- from the Provident Fund deposit of the 4th respondent and a further sum of Rs.1,33,809/- from the Insurance Company. However, the Tribunal dismissed the said O.As on 8-10-2003, but directed to deduct the amounts already received by the Bank. After the dismissal of the O.As by the Tribunal, the petitioners though not liable for payment of balance amount, they have paid the balance principal amount of Rs.62,636/- on 30-10-2003 under two separate receipts. Therefore, according to the petitioners, they are not

liable to pay any further amount or interest thereon. However, since the Bank did not give up their claim for interest, the petitioners filed the present Writ Petition.

Learned counsel for the petitioners states that the only question that requires to be considered in this Writ Petition is as to the rate of interest fixed by the surcharge authority as confirmed by the Tribunal. He contends that charging of interest at 18% per annum is not permissible in view of the Judgment of the Apex Court reported in **RAJNI KUMAR v. SURESH KUMAR MALHOTRA**[1]. Since the liability to pay the amount having not arisen out of a commercial transaction, rate of interest payable on the amount should be reduced from 18% to 6% per annum.

The ratio laid down in the said decision has no application to the facts of this case. This is not a loan advanced for commercial or agricultural purpose. This is a case of embezzlement of amount of the Bank. However, in the facts and circumstances of the case, I deem it appropriate to reduce the rate of interest from 18% to 12% per annum. In other aspects, the impugned Award passed by the Arbitrator as confirmed by the Tribunal is upheld.

In the result, Writ Petition No.15033 of 2001 is allowed and Writ Petition No.24843 of 2003 is disposed of with the modification in the rate of interest. No order as to costs.

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15-12-2006

prk

[1] 2003(5) SCC 315